

EXHIBIT "A"

Edit note: double underlines and ~~single strike outs~~ are effective June 20, 2006. Section 40.440.040.A is effective December 31, 2006. Single underlines are effective July 11, 2007. Deletions effective July 11, 2007 are noted individually in the text.

40.440 HABITAT CONSERVATION

40.440.010 INTRODUCTION

A. Purpose.

The purpose of this chapter is to further the goal of no net loss of habitat functions and values within designated habitat areas by protecting environmentally distinct, fragile and valuable fish and wildlife habitat areas, as defined in Section 40.440.010(C) for present and future generations, while also allowing for reasonable use of private property. This chapter intends to conserve the functional integrity of the habitats needed to perpetually support fish and wildlife populations.

1. These purposes are to be carried out by reviewing impacts of proposed activities within designated habitat areas, and through the development of education, outreach and incentive programs. Review under this chapter shall be based on best available science and the mandates of the Washington Growth Management Act, and shall include consultation with the Washington Department of Fish and Wildlife (WDFW). The county shall emphasize education and voluntary conservation options prior to regulatory enforcement.

2. Within areas designated by this chapter, development or clearing activities which degrade habitat should generally be avoided where possible. However, activities listed as exempt in this chapter can be undertaken in habitat areas without additional review. Activities not listed as exempt can be undertaken following county review if they do not substantially diminish the habitat functions and values present.

3. It is the intent of the board that this chapter be administered with flexibility and attention to site-specific characteristics.

4. The provisions of this chapter dealing with existing agricultural activities are designed to balance conflicting Growth Management Act goals to preserve both agricultural uses and habitat areas, and recognize:

a. That the maintenance and enhancement of natural resource-based industries, including agriculture, is a goal of the state Growth Management Act;

b. That any regulation should be consistent with the "right to farm" provisions in Chapter 9.26 of this Code;

c. That agricultural lands can provide habitat;

d. That habitat protection must relate to the baseline of existing functions and values given historic agricultural practices, rather than seeking to restore pre-agricultural conditions;

e. That since agricultural activities are dynamic, habitat functions and values can be expected to fluctuate during the course of an agricultural cycle, which fluctuation must be considered in identifying existing functions and values; and

- 41 f. That it is expected that continuation of existing agriculture will not degrade
42 existing functions and values unless sediment, nutrients, or chemicals are allowed
43 to enter streams, or existing beneficial canopy in close proximity to streams is
44 significantly degraded;
- 45
- 46 B. Applicability.
- 47 1. General. Review under the standards of this chapter shall apply to any proposed development
48 or non-development clearing activities within designated habitat areas, defined in Section
49 40.440.010(C), which are not listed as exempt, pursuant to Table 40.440.010-1.
- 50 a. Development activities are those proposals already subject to existing county land
51 division, building, grading or other review processes.
- 52 b. Non-development clearing activities are proposals which are not otherwise subject to
53 county review, but involve the alteration or removal of vegetation in designated habitat
54 areas.
- 55 2. Activities Adjacent to Certain Designated Habitat Areas. Proposed new single-family
56 residential development occurring immediately outside but within three hundred (300) feet of
57 designated priority species polygons or within one hundred (100) feet of designated non-
58 riparian priority habitat polygons shall require consultation with ~~the Washington Department~~
59 ~~of Fish and Wildlife (WDFW)~~ prior to issuance of a development permit. In such cases,
60 further review under this chapter is not required unless WDFW finds that there are potential
61 adverse impacts. Agricultural activities adjacent to designated agricultural riparian areas are
62 subject to Section 40.440.040(B). Other proposed land divisions and nonresidential
63 development adjacent to designated wildlife sites shall be subject to SEPA as normally
64 required by Chapter 40.570, (State Environmental Policy Act), and mitigative measures
65 established if there are adverse impacts to the adjacent designated habitat areas.
- 66
- 67 3. Exempt Activities.
- 68 a. All proposed activities outside designated habitat areas are exempt from review under this
69 chapter, except where noted in Section 40.440.010(B)(2) and 40.440.040(B).
- 70 b. Within designated habitat areas exempt activities are listed in Section 40.440.010(D).
71 These do not require review.
- 72 c. All other ~~P~~proposed activities within habitat areas which are not consistent with an
73 approved stewardship plan or subject to 40.440.040 shall be subject to the provisions of
74 Section 40.440.040 ~~(D)~~.
- 75 C. Habitat Areas Covered by This Chapter.
- 76 1. Categories. This chapter shall apply to nonexempt activities as defined in Table 40.440.010-1
77 that are proposed within the following habitat areas:
- 78 a. Riparian Priority Habitat. Areas extending outward on each side of the stream (as defined
79 in section 40.100.070, Definitions) from ~~the ordinary~~ high water mark to the edge of the
80 one hundred (100) year floodplain, or the following distances, if greater:
- 81 (1) DNR Type ~~1 and 2~~ S waters, two hundred fifty (250) feet;
- 82 (2) DNR Type ~~3~~ F waters, two hundred (200) feet;

- 83 (3) DNR Type ~~4 Np~~ and ~~5~~ waters, one hundred ~~fifty (150)(100)~~ feet.
- 84 (4) DNR Type Ns waters, seventy five (75) feet.
- 85 Type 1 – 5 definitions based on WAC 222-16-031. Erosion gullies or rills, and streams
86 which are manmade, less than six (6) inches wide or not having a defined bed and/or bank
87 are not included. Water types are defined and mapped based on WAC 222-16-030,
88 (Forest Practices Rules). Type S streams include shorelines of the state and have flows
89 averaging 20 or more cubic feet per second; Type F streams are those that are not Type S
90 but still provide fish habitat; and type N streams do not have fish habitat and are either
91 perennial (Np) or seasonal (Ns). All streams are those areas where surface waters flow
92 sufficiently to produce a defined channel or bed as indicated by hydraulically sorted
93 sediments or the removal of vegetative litter or loosely rooted vegetation by the action of
94 moving water. Ns streams must connect to another stream above ground. Seasonal or
95 intermittent streams are surface streams with no measurable flow during thirty
96 consecutive days in a normal water year.
- 97 b. Other Priority Habitats and Species (PHS). Areas identified by and consistent with ~~the~~
98 ~~Washington Department of Fish and Wildlife~~ WDFW priority habitats and species
99 criteria, including areas within one thousand (1,000) feet of individual species point sites.
100 The county shall defer to ~~the Washington Department of Fish and Wildlife~~ WDFW in
101 regards to classification, mapping and interpretation of priority habitat species.
- 102 c. Locally Important Habitats and Species. Areas legislatively designated and mapped by the
103 county because of unusual or unique habitat warranting protection because of qualitative
104 species diversity or habitat system health indicators. This subsection shall not apply to
105 areas which have not been designated on official mapping. The criteria for mapping of
106 these areas are that they possess unusual or unique habitat warranting protection because
107 of qualitative species diversity or habitat system health indicators. Recommendations for
108 mapping areas meeting these criteria may be submitted by any person or group, and shall
109 be reviewed annually by the county in conjunction with the plan amendments docket
110 process as specified by Section 40.560.030, (Amendments Docket). Notice of any such
111 recommendations deemed to merit formal consideration shall be provided to impacted
112 property owners pursuant to Section 40.510.030(E)(3), (Type III Process). Such
113 recommendations will not be reviewed as part of individual development requests.
- 114 2. Mapping.
- 115 a. The above habitat areas are mapped on a countywide basis in the adopted “Priority
116 Habitats and Species Map.” Maps are on file in the department and are available for
117 public viewing and circulation. Further distribution of mapped information and
118 notification to potentially impacted property owners will be completed as indicated in
119 Sections 40.440.020(D)(1) and (E)(1).
- 120 b. Maps of individual locations of sensitive, threatened, or endangered wildlife species are
121 maintained separately. Under law, this information is not available for widespread public
122 distribution unless authorized by the ~~Washington Department of Fish and Wildlife~~
123 WDFW. However, property owners may obtain all existing information for their
124 properties upon request.
- 125 c. Official maps shall be updated by the county as warranted by new information using the
126 annual review process.

- 127 3. Best Available Science. Definitions and maps of habitat areas are based on best available
 128 science, as defined in WAC 365-195-905, (Criteria for determining which information is the
 129 "best available science") and described in the following documents:
- 130 a. 1999 Washington Department of Fish and Wildlife Priority Habitats and Species List;
 131 b. 1997 Management Recommendations for Washington's Priority Habitats;
 132 c. The list of best available science references as maintained by the responsible official; and
 133 d. Associated GIS data files maintained by Clark County Department of Assessment and
 134 GIS.
- 135 Best available scientific data supporting this chapter may be updated and/or re-evaluated as
 136 part of future ~~UDC~~ Title 40, (Uniform Development Code) amendments.
- 137 4. Determining Site Specific Applicability. In the event of inconsistencies, official habitat area
 138 definitions shall prevail over countywide maps in determining applicability of this chapter.
 139 The county shall follow the recommendations of ~~the Washington Department of Fish and~~
 140 ~~Wildlife WDFW~~ in the interpretation of site-specific conditions as they relate to the definition
 141 of priority habitat and species.
- 142 D. Activities Reviewed Under This Chapter.
- 143 This chapter applies to activities within designated priority and locally important habitat areas as
 144 described in Table 40.440.010-1.

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Table 40.440.010-1. Exempt and Reviewed Activities		
Proposal	Is a clearing review required?	Are any additional fees or review timelines required?
Land division or lot reconfiguration entirely outside habitat areas, <u>except as subject to 40.440.010(B)(2)</u>	No. Exempt	Fees pursuant to Chapter 6.430.110A
Land division or lot reconfiguration containing habitat areas, <u>except as subject to 40.440.010(B)(2)</u>	Exempt if impacted lots establish building and clearing envelopes outside of habitat	Fees pursuant to Chapter 6.430.110A . Adjustment to allow smaller lots necessary for critical lands protection can be provided without additional fees if consistent with overall zoning density as per Section 40.440.020 (C)(1)
Any activities on lots not in habitat areas, <u>except as subject to 40.440.010 (B)(2)</u>	Exempt	None
Any activities on portions of lots not containing habitat areas, <u>except as subject to 40.440.010 (B)(2)</u>	Exempt	None
Remodeling, or replacement or expansion, not to exceed twenty-five percent (25%) of the 1997 footprint, of existing homes or existing accessory buildings inside habitat areas. Home remodels, replacements or expansions of up to five hundred (500) square feet, or mobile home replacements of single wide with double wide models are also	Exempt	None

Table 40.440.010-1. Exempt and Reviewed Activities		
exempt		
Farming, forestry or vegetation removal activities inside existing yards, areas of existing agricultural use, or existing cultivated portion of habitat areas <u>Maintenance of existing yards and landscaping in habitat areas</u>	Exempt	None
Clearing authorized by forest practices applications other than conversions in habitat areas. <u>Forest practices in habitat areas that are regulated by the Washington Department of Natural Resources under the Forest Practices Rules or regulated under Clark County Code Section 40.260.080, Forest Practices, except conversions or conversion option harvest plans (COHP's)</u>	Exempt	None
Existing agricultural uses within habitat areas <i>Edit note: This exemption expires on July 11, 2007</i>	<u>Exempt</u>	<u>None</u>
Emergency clearing to abate immediate danger to persons or property. For emergency clearing of hazard trees, remove only that portion of a hazard tree as is minimally necessary to remediate the hazard. Cut wood should be left in the habitat area	Exempt	None
<u>Clearing necessary for the emergency repair of utility or public facilities, provided that notification of emergency work that causes substantial degradation to functions and values is reported in a timely manner.</u>	<u>Exempt</u>	<u>None</u>
<u>Clearing for operation, maintenance or repair of existing utilities or public facilities that does not further increase the impact to, or encroach further within the habitat area</u>	<u>Exempt</u>	<u>None</u>
Fire hazard clearing recommended by fire marshal, or consistent with written fire marshal or fire chief guidelines in habitat areas	Exempt	None
Clearing of defined nuisance vegetation in habitat areas which utilize methods that minimize disturbance of soils and non-nuisance vegetation. <u>Replanting with native vegetation should be pursued to prevent re-infestation</u>	Exempt	None
Clearing as minimally necessary for placement of fencing, private wells, septic systems or individual lot sewer, water, electrical or utility connections in habitat areas, where practical alternatives do not exist	Exempt	None
Clearing as minimally necessary for stream bank restoration, for native replanting or enhancements in	Exempt	None

Table 40.440.010-1. Exempt and Reviewed Activities		
habitat areas		
Clearing as minimally necessary for routine road maintenance activities in habitat areas consistent with Regional Road Maintenance ESA Program Guidelines	Exempt	None
Clearing as minimally necessary for soil, water, vegetation or resource conservation projects having received an environmental permit from a public agency in habitat areas	Exempt	None
Clearing as minimally necessary for creating a 4-foot or narrower path using natural, wood-based, or gravel <u>vegetated pervious</u> surfacing in habitat areas	Exempt	None
Clearing as minimally necessary for surveying or testing in habitat areas	Exempt	None
Clearing or development in riparian habitat areas which is at least one hundred (100) feet from the waterline and separated by a continuous public or private roadway serving three (3) or more lots	Exempt	None
Non-development clearing activities in habitat areas consistent with a recorded stewardship plan for which any mitigation specified in the plan is timely completed	Exempt	None
<u>Existing agricultural uses within non-riparian habitat areas</u>	<u>Exempt</u>	<u>None</u>
<u>Existing agricultural uses within riparian habitat areas</u>	<u>Reviewed under section 40.440.040B.1.b</u>	<u>None</u>
New home or other construction in habitat areas	Review required	No additional timelines. Applicable review (building permit, etc.) must comply with ordinance standards. Fees pursuant to Title 6
All other vegetation clearing in habitat areas	Review required	Fees pursuant to Title 6. Applicable review, if any, must comply with ordinance standards. If no other review involved, clearing request will be reviewed administratively

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147 **40.440.020 STANDARDS AND NONREGULATORY MEASURES**

148 A. Approval Criteria.

149 Approval shall be granted for all proposals demonstrating compliance with the following

150 criteria. Approval shall be required prior to clearing or development.

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- 151 1. Intent. Designated habitats are to be protected through avoidance or reduction of ~~most the~~
152 impacts of activities. This section provides standards for the review of proposed nonexempt
153 activities within designated habitat areas.
- 154 2. Basic Criteria. Applicants proposing activities subject to this chapter shall demonstrate that
155 the activity:
- 156 a. Substantially maintains the level of habitat functions and values as characterized and
157 documented using best available science; and
- 158 b. Minimizes habitat disruption or alteration beyond the extent required to undertake the
159 proposal.
- 160 3. Mitigation Measures.
- 161 a. Mitigation measures may be established pursuant to the above basic criteria.
- 162 b. Disrupted functions and values shall be mitigated on-site as a first priority, and off-site
163 thereafter.
- 164 c. An up-to-date science-based guide such as the "Clark County Guide to Best Management
165 Practices for Permitted Development in Habitat Areas" should be used to guide on-site
166 mitigation. Off-site mitigation should be guided by applicable watershed, fish recovery,
167 sub-basin or other science-based plans. Any science used to guide mitigation actions,
168 whether on-site or off-site must meet the criteria and characteristics of best available
169 science listed in WAC 365-195-905. (Criteria for determining which information is the
170 "best available science"), or the state standards in effect at the time of application.
- 171 d. Subject to individual circumstances, potential mitigation measures may include, but are
172 not limited to the following:
- 173 a-(1) Avoiding the impact all together by not taking a certain action or parts of an action;
174 b-(2) Exploring alternative on-site locations to avoid or reduce impacts of activities;
- 175 e-(3) Preserving important vegetation and natural habitat features by establishing buffers
176 or by limiting clearing or alteration;
- 177 (4) Replacing invasive exotic plants with native species (refer to the Clark County
178 Native Plant Communities Guide or other relevant publication for guidance);
- 179 (5) Prohibiting introduction of invasive plant species in habitat areas;
- 180 d-(6) Enhancing, restoring or replacing vegetation or other habitat features and functions.
181 In riparian areas, this may include ~~buffer~~ riparian zone averaging as specified in
182 Section 40.440.020(C)(3);
- 183 (7) Using native plants where appropriate when planting within habitat areas (refer to
184 the Clark County Native Plant Communities Guide or other relevant publication for
185 guidance);
- 186 e-(8) Managing access to habitat areas, including exclusionary fencing for livestock if
187 needed;
- 188 (9) Stream crossings:
- 189 (a) Using existing stream crossings whenever a review of suitability, capacity,
190 access and location, habitat impacts of alternatives, maintenance, liability and
191 economics indicates the existing crossing is feasible;

192 (b) Constructing new stream crossings, when necessary, in conformance to the Water
 193 Crossing Structure Standards in WAC 220-110-070, (Hydraulic Code Rules),
 194 which are incorporated by reference;

195 ~~f.(10)~~ Seasonally restricting on construction activities;

196 ~~g.(11)~~ Implementing best management practices and integrated management practices;

197 ~~h.(12)~~ Monitoring or review of impacts and assurance of stabilization of the area;

198 ~~i.(13)~~ Establishing performance measures or bonding;

199 ~~j.(14)~~ Establishing conservation covenants and other mechanisms to insure long-term
 200 preservation or maintenance of mitigation actions;

201 (15) Utilizing low impact development techniques;

202 (16) Promoting water quality by limiting the use of lawn and garden chemicals in habitat
 203 areas; and/or

204 (17) Avoiding topsoil removal and minimizing topsoil compaction.

205 ~~k.(18)~~ Compensating for on site impacts through off site mitigation only when inside the
 206 unincorporated area, as close as practicable to the site, and when all reasonable on
 207 site mitigation alternatives have been exhausted. Off site mitigation shall be
 208 functionally equivalent, be reviewed on a case by case basis in consultation with
 209 the Washington Department of Fish and Wildlife, and shall delegate adequate
 210 enforcement authority to the county, as approved by the Prosecuting Attorney's
 211 Office. For riparian habitat, off site mitigation must also be located within the same
 212 watershed. Public regional development activities reviewed and approved by
 213 federal or state agencies shall be exempt from the geographic restrictions of this
 214 subsection-- Providing off-site mitigation, subject to the following conditions;

215 (a) When the combination of on-site and off-site mitigation fails to substantially
 216 maintain functions and values within the stream system, the application shall be
 217 denied;

218 (b) All reasonable on-site mitigation alternatives have been exhausted;

219 (c) Off-site mitigation is functionally equivalent to the impacts;

220 (d) Off-site mitigation is appropriate in size and scale to the impacts that are not fully
 221 mitigated on the original site;

222 (e) Proposed off-site mitigation is reviewed by the county on a case-by-case basis
 223 with input from WDFW;

224 (f) Off-site mitigation may be in the form of:

225 i. The purchase of credits from a permitted habitat bank, or

226 ii. A voluntary contribution to the established Cumulative Effects Fund for the
 227 watershed within which the project is located, or

228 iii. A specific mitigation project;

229 [a] Specific off-site mitigation projects for riparian habitat areas must be
 230 located within the same watershed as the original site.

- 231 [b] Specific off-site mitigation projects for all other habitat areas must be in
232 an unincorporated area as close as possible to the original site.
- 233 [c] Public regional development activities that are reviewed and approved by
234 federal and state agencies are exempt from these geographic restrictions;
- 235 (g) Adequate enforcement authority must be delegated to the county, as
236 approved by the Prosecuting Attorney;
- 237 4. The responsible official shall approve, approve with conditions or deny proposals based on
238 compliance with the criteria and the adequacy of proposed mitigation measures to ensure
239 compliance, and applicable reasonable use assurances of Section 40.440.020(B).
- 240 5. The responsible official shall retain final authority for such determinations, which shall be
241 issued consistent with the review timelines of Chapter 40.510, (Type I, II, III, and IV
242 Processes), and shall be based on best scientific information and analysis available within
243 those timelines.
- 244 6. The responsible official shall consult with and substantially follow the resulting
245 recommendations of ~~the Washington Department of Fish and Wildlife~~ WDFW, unless
246 alternative determinations are supported by scientific analysis.
- 247 B. Reasonable Use Assurances. ~~The following assurances shall apply in implementing the standards~~
248 ~~of this chapter:~~ The county assures property owners of the following, as long as impacts are
249 mitigated to the maximum extent practicable, permit conditions limiting locations and requiring
250 mitigations may be imposed, and erosion control measures required:
- 251 1. ~~The standards of this chapter shall not be used to preclude the placement of a single family~~
252 ~~residence on an otherwise legally buildable lot of record. Standards may be applied on~~
253 ~~established properties to limit the proposed location of structures and proposed removal of~~
254 ~~vegetation. This chapter shall not be used to prohibit:~~
- 255 a. Placement of a single-family residence and residential accessory structures on an
256 otherwise legally buildable lot of record;
- 257 b. Expansion of a home existing prior to 1997, not to exceed 25% of the 1997 footprint;
- 258 c. Replacement of a single-wide mobile home with another dwelling, not to exceed twice the
259 footprint of the original mobile home; or
- 260 d. Fire hazard clearing recommended by the fire marshal, or consistent with written fire
261 marshal or fire chief guidelines.
- 262 2. This chapter shall not be used to deny all reasonable economic use of private property. These
263 criteria must be met in order to verify denial of all reasonable economic use:
- 264 a. The application of this chapter would deny all reasonable economic use of the property;
- 265 b. No other reasonable economic use of the property has less impact on the habitat area;
- 266 c. Any habitat alteration is the minimum necessary to allow for reasonable economic use of
267 the property; and
- 268 d. The inability of the applicant to derive reasonable economic use of the property is not the
269 result of actions by the applicant after May 30, 1997.
- 270 3. The standards of this chapter shall not be used to deny or reduce the number of lots of a
271 proposed rural land division allowed under applicable zoning density.

- 272 4. This chapter shall not be used to deny a development proposal from a public agency or public
273 utility, if:
- 274 a. There is no practical alternative to the proposed project with less impact on the habitat
275 area;
- 276 b. The ability of the public agency or utility to provide services to the public would be
277 unreasonably restricted; and
- 278 c. The application is approved through a Type III process pursuant to Section 40.510.030,
279 (Type III Processes). Fees are subject to the Type III Variance fee schedule in Chapter
280 6.110A.010. (Development Fees).
- 281 C. The following regulatory alternatives or incentives shall apply in implementing the standards of
282 this chapter:
- 283 1. Proposed land divisions involving critical areas may transfer density as follows:
- 284 a. Rural area land divisions may utilize the cluster provisions of 40.210.020(D), (Rural
285 Cluster Development).
- 286 b. Urban area land divisions may utilize density transfer provisions of Section
287 40.220.010(C)(5), (Density Transfer).
- 288 2. Existing abutting nonconforming lots under common ownership may be reconfigured under
289 the standards of Section 40.210.010(D), (Non-conforming Lots).
- 290 3. Required riparian zone widths on clearing proposals on existing lots may be varied through
291 the use of internal riparian zone averaging. Subject to review under this chapter, for clearing
292 proposals on existing lots, portions of the riparian zone can be reduced up to fifty percent
293 (50%) from the normal standards of this chapter if riparian zone widths are correspondingly
294 increased elsewhere within the applicant parcel, such that the overall size and function and
295 values of the riparian zone are maintained in the parcel. Riparian zone averaging proposals
296 must clearly identify the existing riparian functions and values on the parcel and any impacts
297 that the proposed averaging may have upon them.
- 298 4. In evaluating forest practice conversion applications under this chapter, the county may allow
299 for modest levels of short-term degradation of habitat function if it is offset by long-term
300 benefits provided by a conservation covenant or other permanent protective measure. Such
301 allowances shall only be made following the recommendation of ~~the Washington Department~~
302 ~~of Fish and Wildlife~~ WDFW.
- 303 D. Individual Stewardship Plans.
- 304 1. To encourage educational and voluntary conservation measures, the county shall notify
305 property owners potentially impacted by wildlife habitat area regulations, and shall assist any
306 owners interested in developing individual stewardship plans which will establish parameters
307 and guidelines for future on-site activities in designated habitat areas. In addition, property
308 owners may consult with WDFW and other agencies or private groups or individuals to
309 develop the scientific information for their stewardship plans.
- 310 2. The county shall provide information on best management practices and other educational
311 and explanatory materials to property owners. The county shall coordinate with ~~the~~
312 ~~Washington Department of Fish and Wildlife~~ WDFW, and other agencies or private groups
313 with expertise in wildlife or land management in the development and distribution of these
314 materials.

- 315 3. The county shall work cooperatively with interested property owners to establish and record a
316 notice of stewardship plan. Stewardship plans should at a minimum include the following:
- 317 a. Mapping of existing structures, roads, driveways and known utilities, and property lines;
- 318 b. Mapping of existing designated habitat areas, water bodies, known wetlands, vegetation
319 and wildlife types, and yards or cultivated areas;
- 320 c. Identification of functions and values associated with the habitat areas, water bodies,
321 wetlands and vegetation and wildlife;
- 322 ~~ed.~~ Mapping and written description of future activities on the site including time frame; and
- 323 ~~ed.~~ Mapping and description of the protective and mitigative measures, ~~if any,~~ for the
324 identified functions and values to be undertaken as part of plan.
- 325 4. Notice of stewardship plans shall be recorded and shall run with the land unless and until a
326 request for revocation or modification has been submitted by the property owner and
327 approved by the county. The county shall approve all such requests unless there are any
328 uncompleted mitigation measures which were agreed to in the stewardship plan as necessary
329 to compensate for clearing of habitat areas undertaken pursuant to the plan. Revocation may
330 trigger the tax penalties associated with withdrawal from an open space taxation program, if
331 applicable.
- 332 5. Property owners with approved stewardship plans are exempt from regulation under this
333 chapter for non-development proposals which are consistent with the stewardship plan and do
334 not otherwise require county building, grading, or other review.
- 335 6. Stewardship plans shall be approved under criteria in Section 40.440.020(A).
- 336 7. Appeals may be filed under the provisions of Chapter 40.510, (Type I, II, III & IV Processes).
- 337 E. Nonregulatory Implementation Measures.
- 338 As part of the implementation of this chapter and related efforts towards wildlife conservation,
339 the county will undertake the following additional nonregulatory measures:
- 340 1. Education and Outreach Measures.
- 341 a. Notify property owners within critical areas;
- 342 b. Develop clear and understandable manuals explaining recommended best management
343 practices for typical rural and urban land owner activities;
- 344 c. Provide seminars and presentations for interested owners and groups;
- 345 d. Coordinate efforts with existing conservation, stewardship or small resource user groups
346 with expertise in wildlife or habitat area land management issues;
- 347 e. Expand local wildlife inventory information through baseline survey of local habitats and
348 species;
- 349 f. Provide cooperative outreach to individual property owners in critical areas who wish to
350 develop stewardship plans to establish parameters for future activities involving clearing
351 on their property.
- 352 2. Incentive Measures.
- 353 a. Create and/or expand incentives through the current use taxation program;
- 354 b. Develop and/or expand land acquisition programs;

355 c. Develop non-monetary incentives for project proponents to exceed mitigation
356 requirements.

357 F. Specific Activities.

358 Special procedures and standards apply to certain specific activities as provided for in Section
359 40.440.040.

360 G. Habitat Banking. (reserved)

361

362 **40.440.030 ADMINISTRATION**

363 A. Coordination with Other Permits.

364 Development proposals requiring review under this chapter which involve other county permits
365 shall be reviewed under the timelines of the existing review without additional cost; provided,
366 that application information required under this chapter (Section 40.440.030(C)) is submitted and
367 approval criteria (Section 40.440.020(A)) are addressed.

368 B. Non-Development Proposals.

369 Non-development proposals not involving any other county application development reviews
370 shall be reviewed as a Type I ministerial application under the timelines and procedural standards
371 of Section 40.510.010, (Type I Process). Section 40.440.030(C) indicates application information
372 to be submitted.

373 C. Submittal Information.

374 1. Applications for Proposed nonexempt activities requiring review under this chapter shall be
375 submitted with applications as follows: the following:

376 a. Development applications involving other county review shall submit application
377 materials according to specifications of other reviews involved, and shall also include a
378 completed proposed habitat activity form.

379 b. Non-development applications not involving other county review shall be submitted with
380 a completed proposed habitat activity form.

381 2. Where required by state law, a completed environmental checklist pursuant to the State
382 Environmental Policy Act (SEPA) shall also be submitted unless categorically exempted by
383 the SEPA Rules.

384 3. The county shall develop and make available proposed habitat activity forms. These forms
385 shall clearly and concisely provide direction to applicants on what information is needed in
386 the following areas:

387 a. Name, address, location, and basic tracking information for the application;

388 b. Existing conditions information, natural and manmade features on the site;

389 c. Description and mapping of proposed activities and how this would change existing
390 conditions on the site.

391 4. Proposals under this chapter are encouraged but not required to include a report or other
392 assistance from a biologist, botanist, ecologist, or other similarly qualified or trained
393 professional.

394 5. Persons interested in establishing an individual stewardship plan for future activities as
395 specified in Section 40.440.020(D) should contact the department.

396 D. Permit Authority and Timelines.

397 1. An approval granted under this chapter shall remain valid until proposed activities are
398 undertaken and completed. An approved permit not acted upon shall be valid for two (2)
399 years, and upon showing of good cause, may be extended for an additional twelve (12)
400 months.

401 2. Approval for habitat area activities as part of other county development approvals shall be
402 valid for a time period specified by the other permit(s) involved.

403 3. Approved stewardship plans shall remain valid as specified in Section 40.440.020(D).

404 E. Appeals.

405 Appeals of county decisions under this chapter may be filed under the provisions of Chapter
406 40.510, (Type I, II, III & IV Processes).

407 F. Enforcement.

408 At such time as a violation of this chapter has been determined, enforcement action shall be
409 commenced in accordance with the enforcement provisions of Title 32 of this code,
410 (Enforcement), and may also include the following:

411 1. Applications for county land use permits on sites that have been found to be in violation of
412 this chapter pursuant to the process set forth in Title 32 of this code. (Enforcement), shall not
413 be processed until three (3) years after the completion of clearings, provided, that if the three
414 (3) years may be reduced upon approval and implementation of a restoration or mitigation
415 plan, to include the following:

416 a. A plan for the replanting of trees, brush and groundcover of a type and distribution
417 comparable to that existing prior to clearing; provided, that the responsible official may
418 approve alternative species in order to promote expedient soil stabilization, and may
419 require additional tree planting as mitigation for the loss of mature trees; and

420 b. A monitoring plan to assure at least a ninety percent (90%) survival rate of re-established
421 plantings after at least three (3) but not more than eight (8) growing seasons; and

422 c. Where fish and wildlife habitat areas are cleared in violation of this chapter, a plan to
423 restore habitat functionality, as it existed prior to the violation, subject to the review and
424 evaluation of the Washington Department of Fish and Wildlife WDFW.

425 d. Satisfaction of the terms and conditions of any judgement or order entered based upon the
426 violation.

427 e. Financial assurances in the form of a bond or other security acceptable to the county, in
428 an amount sufficient to re-establish the mitigation in the event of failure or subsequent
429 disturbance may be required by the responsible official. The financial assurances shall
430 remain in place for the length of the time specified for monitoring in the plan and shall be
431 released after a request by the applicant and a final inspection. In the event of failure of
432 the mitigation, failure to fully execute the mitigation plan, or subsequent disturbance,
433 forfeiture of the financial assurances shall be required and the funds shall be used to re-
434 establish the mitigation or to complete the execution of the plan. In the event that such
435 re-establishment or completion is deemed impractical by the director, the funds shall

436 accrue to the established Cumulative Effects Fund for the watershed within which the site
437 is located.

438 2. In the absence of any mitigation measures approved by the department for sites cleared in
439 violation of this standard, the county may refuse to approve any permit for up to an additional
440 three (3) years.

441 **G. Specific Activities.**

442 Special procedures and standards apply to certain specific activities as provided for in
443 Section 40.440.040.

444 **40.440.040 SPECIFIC ACTIVITIES**

445 The following specific activities are subject to special procedures and standards as set forth below.

446 *Edit note: The following section, A. is effective at midnight on December 31, 2006.*

447 **A. Routine Utility and Public Facility Maintenance and Operations.**

448 The responsible official may issue programmatic permits for routine maintenance and operations
449 of utilities and public facilities. The programmatic permit process shall not deny or unreasonably
450 restrict a utility's or public agency's ability to provide services to the public. Programmatic
451 permits only authorize activities specifically identified in the permit approval.

452 1. Application submittal requirements. Unless waived by the responsible official with specific
453 findings in the approval document, applications for programmatic habitat permits shall
454 include a programmatic permit plan that includes the following:

455 a. A discussion of the purpose and need for the permit;
456 b. A description of the scope of activities in habitat areas;
457 c. Identification of the geographical area to be covered by the permit;
458 d. The range of functions and values within designated habitat areas covered by the permit;
459 e. Specific measures and performance standards to be taken to avoid, minimize and mitigate
460 impacts on the functions and values:

461 (1) Procedures for identification of designated habitat areas;
462 (2) Maintenance practices proposed to be used;
463 (3) Restoration measures;
464 (4) Mitigation measures and assurances;
465 (5) Annual reporting to the responsible official that documents compliance with permit
466 conditions and proposes any additional measures or adjustments to the approved
467 programmatic permit plan;
468 (6) Reporting to the responsible official any specific habitat degradations resulting from
469 maintenance activities when the degradation occurs or within a timely manner;
470 (7) Responding to any department requests for information about specific work or
471 projects;
472 (8) Procedures for reporting and/or addressing activities outside the scope of the
473 approved permit.

474 (9) Training all employees, contractors and individuals under the supervision of the
475 applicant who are involved in permitted work.

476 2. Permit Review.

477 a. Programmatic permit applications that are exempt from SEPA are subject to type I
478 review.

479 b. Programmatic permit applications that are not exempt from SEPA are subject to type II
480 review.

481 c. Programmatic permit applications under type II review shall not be subject to the
482 distribution requirements of CCC 40.510.020(E)(2)(a)(3). (Public Notice). Within
483 fourteen (14) calendar days after the date an application is accepted as fully complete, the
484 county shall publish in a newspaper of general circulation a summary of the notice,
485 including the date, time and manner of making comments, the nature and location of the
486 proposal and instructions for obtaining further information.

487 3. Findings and Approval.

488 a. A decision approving, denying or reauthorizing a programmatic permit shall be supported
489 by findings of fact relating to the standards and requirements of this chapter.

490 b. An approved programmatic permit must, at a minimum, include:

491 (1) A programmatic permit plan; and

492 (2) A provision stating the duration of the permit.

493 4. Duration and Reauthorization.

494 a. The duration of a programmatic permit is for five years unless:

495 (1) An annual performance based reauthorization program is approved within the permit,
496 or;

497 (2) A shorter duration is supported by findings.

498 b. Requests for reauthorization of a programmatic permit must be received prior to the
499 expiration of the original permit.

500 (1) Reauthorization is reviewed and approved through the process described in
501 subsection (A)(1-3).

502 (2) Permit conditions and performance standards may be modified through the
503 reauthorization process.

504 (3) The responsible official may temporarily extend the original permit if the review of
505 the reauthorization request extends beyond the expiration date.

506 B. Agricultural Uses, including Animal Husbandry (reserved).

507 *Edit note: "(reserved)", line 506 above, is deleted effective July 11, 2007 and the remainder of this*
508 *section is effective at midnight on July 11, 2007.*

509 1. Applicability.

510 a. Non-riparian habitat

511 (1) Agricultural activities in existence on July 11, 2006 within designated non-riparian
512 habitat areas are presumed not to cause substantial degradation of existing habitat
513 functions and values and are, therefore, exempt from regulation under this chapter.

514 (2) The conversion of designated non-riparian habitat areas to agricultural use
515 subsequent to July 11, 2006 shall be subject to the non-development clearing rules of
516 this chapter. Conversion does not include changes from one agricultural use to
517 another agricultural use or changes in crops.
518
519 b. Riparian habitat.
520 (1) Agricultural activities in existence on July 11, 2006 within designated riparian habitat
521 areas, and the expansion thereof onto adjacent lands not to exceed twenty-five
522 percent (25%) of the footprint of the existing agricultural use (Agricultural/habitat
523 protection plan only), shall be subject to the agricultural module provided below.
524 (2) The conversion of designated riparian habitat areas to agricultural use, other than an
525 expansion allowed for in subsection (b)(1) above, subsequent to July 11, 2006 shall
526 be subject to:
527 (a) The Agricultural/habitat protection plan option (Section 40.440.040(B)(2)(a)), if
528 undertaken on lands zoned agriculture, forest, or ag-wildlife;
529 (b) The non-development clearing rules of this chapter if undertaken on lands not
530 zoned agriculture, forest, or ag-wildlife.
531 (c) Conversion does not include changes from one agricultural use to another
532 agricultural use or changes in crops.
533
534 2. Agricultural module. Where applicable, the following options are available to be used for
535 compliance with this section.
536 a. Agricultural/habitat protection plan option.
537 (1) Regulated area. For the purposes of an agricultural/habitat protection plan, the
538 regulated riparian area shall be 100 feet from the ordinary high water mark of Type S
539 streams, 100 feet from the ordinary high water mark of Type F streams, 75 feet from
540 the ordinary high water mark of Type Np streams, and 75 feet from the ordinary high
541 water mark of Type Ns streams. The plan may include practices and other mitigation
542 measures on land outside the regulated riparian area to achieve the standard set forth
543 in subsection (2) below.
544 (2) Standard. An agricultural/habitat protection plan shall be approved if its
545 implementation will not substantially degrade habitat functions and values that
546 existed within the area designated in subsection (1) above on July 11, 2006,
547 considering normal fluctuations due to the agricultural cycle. A plan may be
548 submitted by a group of neighborhood owners whose properties are in close
549 proximity in which case the foregoing standard shall be applied to the common plan.
550 (3) Plan contents. Agricultural/habitat protection plans shall, at a minimum, include the
551 following;
552 (a) An approximate mapping of existing and proposed structures, roads, driveways,
553 utilities, property lines, and agricultural uses.
554 (b) A map of regulated riparian habitat areas.
555 (c) Identification of existing habitat functions and values within the regulated habitat
556 area on July 11, 2006.

557 (d) A description of best management practices and other mitigation measures to be
558 undertaken in order to achieve the standard in subsection a(2) above.

559 (e) The owner's signature attesting that the information in the plan is accurate to the
560 best of the owner's knowledge, and the mitigation measures specified in the plan
561 will be implemented.

562 (f) The signature of an ag-habitat technician certified by the county attesting that
563 they have inspected the area covered by the plan and that the plan satisfies the
564 standard in subsection a(2) above.

565 (4) Guidelines. The responsible official shall work with a committee appointed by the
566 board to include interest group representatives (at least one of whom shall be a
567 designee of the Clark-Cowlitz Farm Bureau, whose view(s) shall be given
568 appropriate weight to ensure that the guidelines will be both practical and cost
569 effective) and habitat professionals to develop for board adoption following a duly
570 advertised public hearing a set of guidelines which:

571 (a) includes a checklist to identify riparian habitat functions and values;

572 (b) identifies potential positive and negative habitat affects of various agricultural
573 activities; and

574 (c) describes best management practices and other measures to enhance the
575 positive effects and mitigate or minimize any potential negative effects;
576 and

577 (d) includes "off-the-shelf" agricultural/habitat protection plans which may
578 be applied to typical agricultural properties and activities.

579 The guidelines shall provide that pesticide use within riparian areas must be
580 described in the management plan and conform to label instructions.

581 (5) Approval. Agricultural/habitat protection plans shall be prepared or reviewed and
582 approved by an ag-habitat technician certified by the responsible official to have
583 completed a training program on application of the guidelines. Ag-habitat
584 technicians shall have received training in application of this chapter, which training
585 program shall be made available to any interested party. Training classes may be
586 facilitated by interest groups such as the Clark-Cowlitz Farm Bureau using trainers
587 from the Clark Conservation District, WSU Extension, Natural Resource
588 Conservation Service, or other groups as may be certified as qualified trainers by the
589 responsible official. An ag-habitat technician shall approve the plan as meeting the
590 standard and content requirements of subsection 40.440.040(B)(2)(a)(2) and (3). An
591 owner dissatisfied with the review by an ag-habitat technician may seek approval of
592 the proposed management plan by the responsible official whose Type I decision
593 may be appealed under the provisions of Chapter 40.510 (Type I, II, III & IV
594 Processes).

595 (6) Filing. The ag-habitat technician shall notify the county responsible official
596 of the adoption of an approved Agricultural/habitat protection plan by a
597 property owner indicating the property covered by the plan and, at the choice
598 of the property owner either providing a copy of the plan or summarizing the
599 contents of the plan. Notice of such approval shall also be recorded with the
600 Clark County Auditor and run with the land unless the plan is modified or
601 rescinded.

602 (7) Modification/rescission. Agricultural/habitat protection plans may be modified by
603 the owner at any time utilizing the same process as applicable to initial approval.
604 Plans may be rescinded by the owner with approval of the responsible official if the
605 owner certifies either that future agricultural activities will be undertaken utilizing the
606 default option or agricultural activities have ceased. Notice of
607 modification/rescission shall be recorded with the Clark County Auditor.

608 b. Default option.

609 (1) Regulated area. For the purposes of the default option, the regulated riparian area is
610 divided into two zones. Except as provided below the inner zone, closest to the
611 stream, extends from the ordinary high water mark outward fifty (50) feet on Types S
612 and F streams and thirty (30) feet on Type N streams. The outer zone extends an
613 additional fifty (50) feet on Types S and F streams and forty-five (45) feet on Type N
614 streams. Where slopes exceed twenty-five percent (25%), the inner zone is the
615 greater of the prescribed zone or the top of the slope break. Where wetlands are
616 present within the inner zone, the zone is extended to the greater of the prescribed
617 width of the inner zone or the wetland buffer as designated in Chapter 40.450
618 (Wetland Protection). However, in no case is the inner zone greater than the
619 combined widths prescribed for in the inner and outer zones for that stream type.
620 Where there is an existing road within the inner zone, the zone stops at the edge of
621 the road improvement that is closest to the stream and the outer zone extends outward
622 from that edge.

623 (2) Standard. Clearing within the inner zone is allowed only to enhance habitat functions
624 and values. Animal husbandry within the inner zone is prohibited. Clearing and
625 animal husbandry within the outer zone shall not substantially degrade habitat
626 functions and values as they existed on July 11, 2006, after considering normal
627 fluctuations due to the agricultural cycle. Although it is presumed that continuation
628 of agricultural activities within the outer zone that existed on July 11, 2006 will not
629 substantially degrade existing habitat functions and values, evidence of substantial
630 degradation such as excess sediment, nutrients or chemicals moving from the outer
631 zone into the stream resulting from agricultural activities, constitute grounds for
632 enforcement action which may require restoration of lost functions and values.
633 Pesticide application within the outer zone must conform to label specifications and
634 application within the inner zone must be by a licensed applicator.

635 (3) Reasonable use. If the inner zone impacts more than fifty percent (50%) of a parcel
636 that is ten (10) acres or less in area, or more than twenty-five percent (25%) of a
637 parcel that is five (5) acres or less in area, the responsible official may approve a
638 reasonable use reduction to the width of the inner zone. In such case, clearing and
639 animal husbandry may be allowed up to ten (10) feet from the ordinary high water
640 mark provided that reasonable practices and other appropriate mitigation measures
641 are employed to limit sediment, nutrients and chemicals from entering the stream.

642 3. Administration.

643 a. No application fees apply to the approval of Agriculture/habitat protection plans.

644 b. No county review is associated with the default option unless the owner seeks approval of
645 a reasonable use reduction of the inner zone, which application shall be processed
646 without application fees.

647 c. Evidence of violation of the standards in subsections 40.440.040(B)(2)(a)(2) or
648 (B)(2)(b)(2) shall be grounds for enforcement action under the provisions of Title 32
649 (Enforcement) and Section 40.440.030(F).

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**AMENDATORY CODE PROVISIONS ASSOCIATED
WITH THE HABITAT CONSERVATION ORDINANCE**

EXHIBIT “B”

TABLE 6.110A.010

J	Habitat Conservation	
I	Clearing permit	541
II	Habitat predetermination	85
III	Stewardship plan	0
IV	Programmatic permit – Type I	1,400
V	Programmatic permit – Type II	2,800
VI	Programmatic permit – Re-authorization	700
VII	Agricultural management plan	0

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40.100.070 DEFINITIONS

Agriculture, or Agriculture Uses or Agricultural Activities	“Agriculture”, or “Agriculture uses”, or “Agricultural activities” means the use of the land for agricultural purposes, including, but not limited to, farming, dairying pasturage, agriculture, horticulture, floriculture, viticulture and wineries, apiaries, and animal and poultry husbandry, and the necessary accessory uses and structures for storing produce; provided, however, that the construction and operation of any such accessory use or structure shall be incidental to that of normal agricultural activities, and provided further, that the above uses shall not include slaughterhouses and meat packing or commercial feeding of animals.
Animal husbandry	“Animal husbandry” means the care and raising of domesticated animals, such as cattle, horses, sheep, llamas, and poultry, but not including household pets, such as dogs and cats.

EXHIBIT “A”

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Hazard tree	“Hazard tree” means any tree which, in the opinion of the responsible official, ((or)) an expert approved by Clark County (such as, but not limited to, a professional forester or landscape architect), or a similar expert employed by another public agency or utility, has a strong likelihood of causing a hazard to life or property.
Low impact development	“Low impact development” means a stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated into engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic functions.
Riparian zone	<p>“Riparian zone” means areas encompassing riparian priority habitat, a subset of priority habitat and as defined by the Washington Department of Fish and Wildlife (WDFW), extending outward from the ordinary high water mark of water to the one hundred (100) year floodplain or the following distances if greater: Definitions of the ((Type 1 through 5 waters are found in WAC 222-16-030:</p> <p>DNR Type 1 and 2 waters, two hundred fifty (250) feet;</p> <p>DNR Type 3 water, two hundred (200) feet;</p> <p>DNR Type 4 and 5 waters, one hundred fifty (150) feet.</p> <p>Erosion gullies or rills, and streams which are manmade, less than six (6) inches wide or not having a defined bed and/or bank are not included.))</p> <p>Types S, F, Np and Ns waters are found in WAC 222-16-030.</p> <p>Type S water, two hundred fifty (250) feet;</p> <p>Type F water, two hundred (200) feet;</p> <p>Type Np water, one hundred (100) feet;</p> <p>Type Ns water, seventy-five (75) feet.</p> <p>Not included are erosion gullies or rills, and irrigation ditches, canals, stormwater run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse which has been altered by humans.</p>
Utilities	“Utilities” means facilities operated by public or private entities to supply water, electricity, gas, sewer, transportation, or other similar services to the public.